The Development Of Regulations For The Draft Alberta Environmental Protection And Enhancement Act

91-02373/

INTRODUCTION

The draft Alberta Environmental Protection and Enhancement Act (AEPEA) is intended to incorporate nine existing acts into one new act, providing effective and integrated environmental legislation for Alberta. The proposed AEPEA does not provide all the rules of general application in the legislation. The Act, like most other statutes, enables further laws, called regulations, be made to provide the means of carrying out the intent of the Act. There are 39 existing environmental regulations which support the acts which are being incorporated into the AEPEA. These existing regulations will also be revised to reflect changes in the Act. See "A Guide to the Proposed Alberta Environmental Protection and Enhancement Legislation" to determine which regulations relate to which parts of the proposed Act. As well, new regulatory areas will be addressed, the most significant being procedural regulations related to environmental impact assessment, approvals, and boards of review. Brief outlines of what the new regulations will contain are also included in the Guide to the proposed legislation.

This document outlines the potential for public involvement and participation in the process of developing regulations for the AEPEA. Summaries of the procedural regulations mentioned above are provided to assist the public in commenting on these important matters.

PUBLIC INVOLVEMENT AND REGULATORY DEVELOPMENT

In the fall of 1990, the Environmental Legislation Review Panel will conduct public meetings across the province to enable Albertans to comment on the proposed AEPEA. Subsequently, the panel will report its findings and recommendations to the Minister of Environment. This report will be used in drafting the proposed legislation for introduction in the Legislative Assembly of Alberta in the spring session of 1991.

Concurrently, existing regulations will be revised and enhanced and new regulations will be drafted. It is anticipated the regulations will be completed for the proclamation of the AEPEA during the fall of 1991. As part of this process, the input of the public and affected stakeholders will be sought. In addition to the three new procedural regulations, outlines of other regulations will be made available to interested parties upon request, as the summaries are completed. After receipt and consideration of comments, the regulations will be prepared to become effective upon proclamation of the AEPEA.

REGULATORY REVIEW PROCESS

Oct. '90 - Nov. '90	Overview of three procedural regulations provided to public to assist in draft legislation review.
Dec. '90 - Mar. '91	Overview of all proposed regulations provided to stakeholders for input.
April '91 - June '91	Regulations drafted.
July '91 - Sept. '91	Draft regulations provided to stakeholders and public for comment.

THREE NEW REGULATORY AREAS

1. Environmental Impact Assessment

The proposed AEPEA establishes a legislated environmental impact assessment (EIA) process to review proposed projects for potential environmental impacts. While the new legislation includes most of the procedural requirements for the EIA process, projects subject to review and some procedural matters will be dealt within the regulations.

Projects Subject to Review

- certain projects will be subject to mandatory EIA review (See Appendix A for types of projects which have been subject to EIA review in the past.)
- certain projects may or may not be subject to the EIA process (discretionary projects.) Such projects will be subject to an initial screening.

Screening Procedures for Discretionary Projects

- Initial Screening
  The regulations will provide details of
  - how the public will be advised of the Director's decision to require interdepartmental review of a proposed project, and
  - how the public will be able to file Statements of Concern with respect to such projects
- Project screening report
  The regulations will specify
  - how the project screening report will be available to those submitting Statements of Concern and to the general public

Terms of Reference

The regulations will set out

- how the public will be able to comment on establishing the Terms of Reference for specific EIA reports
- how the proposed Terms of Reference will be published

EIA Report

The regulations will outline

- how the completed EIA report will be made available to the public
- how EIA reports will follow basic form and content requirements

II. Approvals

The proposed AEPEA specifies that approvals are required for activities designated by the Act or the regulations. A regulation will be developed that will list and classify activities requiring an approval.

Classification of activities may be based on whether or not the activity

- is in a mandatory EIA classification
- is subject to several departmental approvals
- requires a business licence
- involves a one-time approval.

Activities will be classified in order to develop review and approval mechanisms appropriate to different types of activities.

Classification of activities requiring approvals will promote a one-window approach. This approach would see proponents make a single application to Alberta Environment for environmental approval of their projects. In the past, complex projects such as coal mines have required up to 10 separate Alberta Environment approvals, permits, and licences. The department will now coordinate approvals on behalf of its various divisions.

The new approvals regulations will

- list activities requiring an approval
- use an integrated approach to approvals
- promote timely approvals
- simplify approvals procedures
- link approvals to EIA process
- coordinate referral committees for multi-approval projects to facilitate a one-window approach.

III. Board of Review

The proposed AEPEA provides for an administrative appeal tribunal called a Board of Review to hear and review appeals on a variety of environmental issues. The Board will forward a report and recommendations on an appeal to the Minister of Environment for a final decision. The Board of Review will replace all of the current Alberta Environment appeal procedures.

Appointment

The regulations will provide details on

- a standing board appointed by the Lieutenant Governor in Council
- panels to review individual appeals

Notice of Objection

The Act entitles specific individuals to commence an appeal by filing a Notice of Objection. The regulation will provide the form and content of the Notice of Objection.

Grounds of Appeal

The Act provides the grounds of appeal to a Board of Review. See Appendix B for a summary of the provisions related to these grounds.

Standing

The regulations will outline who will be able to make representations in a Board of Review proceeding:

- the party who has filed a Notice of Objection
- the statutory decision-maker whose decision is under review
- a party with sufficient interest in the proceeding

- approval holders are always sufficient-interest parties
- other persons as determined by the Board of Review.

Notice

The regulations will set out

- how timely public notice of commencement of an appeal will be provided

Hearings

The regulations will specify that

- an informal means of concluding an appeal will be available to the Board before a hearing

Conduct of Hearing

The regulations will enable

- the Board to set rules of practice and procedure for the conduct of a hearing

Costs

The regulations will provide details including

- the Board of Review's ability to award interim and post-hearing costs to any party, although costs will generally be awarded after the hearing
- the Board's discretion to require a party to provide deposits applicable to costs
- that costs may include such items as reasonable travel and living expenses, fees for experts and lawyers, and secretarial costs, and
- that any party may appeal costs awarded for or against them to the Board.

Report

The regulations will outline

- that panels will finalize reports and recommendations and the Board will forward these to the Minister within a specified time period.

APPENDIX A

Types of Activities Previously Subject to EIA Review

- construction, operation and reclamation of electric transmission lines of 500 KV
- coal mines producing more than 45,000 tons per year
- all oil sands mines
- new commercial enhanced recovery in-situ oil sands and heavy oil projects
- new coal processing plants
- new oil sands and heavy oil extraction, upgrading and processing plants
- all major thermal electric power generating plants
- new oil and gas refineries
- sour gas processing plants
- manufacturing and processing of pesticides, herbicides and fungicides
- pulp mills
- blended chemical fertilizer plants
- expansion of coal mines
- expansion of oil sands mines
- expansion of commercial enhanced recovery in-situ oil sands and heavy oil projects
- new commercial primary in-situ oil sands and heavy oil projects
- expansion and modification of oil sands and heavy oil extraction, upgrading and processing plants

- processing plants
  - fibre processing plants
  - wood preservatives processing plants
- secondary metal recovery (ie. silver from photo developing fluid; vanadium from oil sands tailings)
- meat processing (ie. fish, livestock, poultry)
- distilleries, breweries and malting plants
- major recreation and tourism projects

APPENDIX B

Board of Review

Who Can Appeal?	What Can Be Appealed?
Directly affected person	- Granting of approval or changes without prior public notice - Terms and conditions of approval or changes with prior public notice
Approval holder	- Granting of approval or changes without prior public notice - Terms and conditions of approval or changes with prior public notice - Cancellation or suspension of approval by the Minister
Persons previously filing Statements of Concern	- Terms and conditions of approval or changes with prior public notice
Holder of Certificate of Competence	- Cancellation or suspension of Certificate of Competence by the Minister
Person subject to environmental protection order regarding reclamation	- Environmental protection order regarding reclamation

Any person receiving copy of Reclamation Certificate	- Reclamation Certificate
Person subject to environmental protection order regarding litter	- Environmental protection order regarding litter